

UNPUBLISHED

UNITED STATES COURT OF APPEALS

FOR THE FOURTH CIRCUIT

UNITED STATES OF AMERICA,

Plaintiff-Appellee.

v.

No. 97-7079

MERRICK RALPH FALESBORK, a/k/a

Merrick, a/k/a Merc,

Defendant-Appellant.

Appeal from the United States District Court
for the Eastern District of Virginia, at Norfolk.

J. Calvitt Clarke, Jr., Senior District Judge.

(CR-91-116-N, CA-97-397-2)

Submitted: August 13, 1998

Decided: September 2, 1998

Before WIDENER and WILKINS, Circuit Judges, and HALL,
Senior Circuit Judge.

Vacated and remanded by unpublished per curiam opinion.

COUNSEL

Jeffrey S. Shapiro, VERGARA & ASSOCIATES, Hopewell, Vir-
ginia; Cheryl Johns Sturm, Westtown, Pennsylvania, for Appellant.
Laura Marie Everhart, Assistant United States Attorney, Norfolk, Vir-
ginia, for Appellee.

Unpublished opinions are not binding precedent in this circuit. See Local Rule 36(c).

OPINION

PER CURIAM:

Appellant appeals from a district court order that concluded his motion filed under 28 U.S.C.A. § 2255 (West 1994 & Supp. 1998), was barred by the one-year limitations period of 28 U.S.C.A. § 2255 (West Supp. 1998). Appellant's conviction became final on September 1, 1993, and he filed his habeas motion on April 21, 1997. Appellant had until April 23, 1997, to file his § 2255 motion. See Brown v. Angelone, ___ F.3d ___, 1998 WL 389030 (4th Cir. July 14, 1998) (Nos. 96-7173, 96-7208). Therefore, his motion was not time barred. For these reasons, we grant a certificate of appealability on this issue, vacate the district court's order, and remand for further proceedings. We dispense with oral argument because the facts and legal contentions are adequately presented in the materials before the court and argument would not aid the decisional process.

VACATED AND REMANDED